

MESSAGE

To: consult/SFC@SFC
cc: "Driscoll, Kelly" <Kelly_Driscoll@ssga.com>
"Leung, Doris" <Doris_Leung@ssga.com>

CEO

Ext :
Ext :
Ext :

From: "Simmons, Catherine J"
<Catherine.Simmons@statestreet.com>
Date: 21/12/2009 04:32 PM
Subject: Consultation on Proposals to Enhance Protection for the Investing Public

Please find attached comments from State Street Global Advisors in response to the *Consultation Paper on Proposals to Enhance Protection for the Investing Public* of September 2009. An original will be delivered by mail.

Please do not hesitate to contact us should you have any questions.

Kind Regards

Catherine Simmons

<<Letter to SFC Final.pdf.zip>>

Catherine Simmons | Vice President | Government, Regulatory, Industry Affairs - Asia Pacific

State Street Bank and Trust Company | 68 Fl | 2 International Finance Centre | 8 Finance Street |
Central | Hong Kong | Ph: +852 2230 1577 | Mob: +852 6391 6219 | Fax: +852 2978 9248 |



www.statestreet.com Letter to SFC Final.pdf.zip

December 21, 2009

Securities and Futures Commission
8th Floor
Chater House
8 Connaught Road
Central
Hong Kong

Email: consult@sfc.hk

Attn: Consultation on proposals to enhance protection for the investing public

Dear Sir/Madam

Thank you for the opportunity to respond to the *Consultation Paper on Proposals to Enhance Protection for the Investing Public* of September 2009.

State Street Global Advisors (SSgA) is one of the largest providers of Exchange Traded Funds (ETFs) in the world. SSgA has more than USD 186 billion ETF assets under management globally made up of over 100 ETFs. In Asia Pacific, our ETF assets are USD 15 billion with 17 listings including USD 6.9 billion in Hong Kong. (Figures as of 30 Sep 2009)

In commenting on the consultation paper we will focus on the impact of the proposals on ETFs and professional investors given our client base and business goals. Since we do not offer retail products directly to the public or Unlisted Structured Products or Investment-Linked Assurance Schemes we will not comment on parts of the consultation that deal with these issues.

PART II - PRODUCTS

1. *Restrictions regarding Structured Funds* – Currently SS&A does not use market access products in our ETFs and, at present, we are not planning to use them in any new products. As such we have no comment on the requirements listed in A to H of paragraph 136. (Paragraphs 133 to 137 in Part II of the Consultation Paper refers.)
2. *Investment in other schemes* – We support the proposal to allow more flexibility in investing in other collective investment schemes. We agree that the change would provide increased investment flexibility while maintaining an appropriate level of investor protection. Some Hong Kong funds are presently disadvantaged by being restricted from investing in offshore funds. (Paragraphs 153 to 157 in Part II of the Consultation Paper refers.)
3. *Product Key Facts Statement (KFS)* – We are comfortable with the information required in the KFS. We also support the proposed optional disclosure of total expense ratio (TER) in the KFS and the disclosure of the calculation basis or formula. As noted there is currently no universal definition for TER. Given the absence of a universal definition clear disclosure of the calculation basis or formula of the TER is a reasonable requirement. (Paragraph 167 in Part II of the Consultation Paper refers.)
4. *Bilingual Annual Reports* – We recommend retaining the option of providing only English annual reports for recognized and non recognized jurisdiction schemes rather than just for recognized jurisdiction schemes. Advising the customer that only English will be provided is a good approach. Preparing Chinese translations can be time consuming and costly to a fund. As others have noted, such a requirement might result in a limited range of international products being offered in Hong Kong – to the detriment of Hong Kong investors. If this option is not available we support option (b) in paragraph 162 i.e. provision of a full English language annual report and an abridged version of the Chinese language annual report. (Paragraphs 159 to 162 in Part II of the Consultation Paper refers.)
5. *Connected Party Transactions* – We support the proposal to remove the 50% cap on using connected brokers and to replace it with six general principles. The principles of arms-length terms; due care in the selection of brokers or dealers; best execution; prevailing market fees; monitoring of transactions; and disclosure of benefits received by brokers or dealers are already generally used. The principles are a more effective way to ensure that the best interests of investors are served than application of an

arbitrary percentage cap. (Paragraph 173 in Part II of the Consultation Paper refers.)

6. *Distribution of Financial Reports* – We support the proposed distribution of financial reports on a request basis over the routine distribution of hard copies. This will reduce costs for the companies concerned and have environmental benefits. (Paragraph 183 in Part II of the Consultation Paper refers.)

PART III - INTERMEDIARIES CONDUCT

7. *Investor Characterization* – We agree that professional investors, and in particular institutional investors, should be excluded from the proposed requirement to seek each client's knowledge of derivatives and characterize those with such knowledge as "clients with derivative knowledge". Such institutional investors should be regarded as having the requisite knowledge and skills to make an informed purchase of such products. (Paragraphs 15 to 28 in Part III of the Consultation Paper and Appendix C 5.1A (a) Code of Conduct for Professional Investor Rules refers.)
8. *Pre-sale Disclosure of Monetary and Non-monetary Benefits* - We would like to see a clear exemption from this requirement for institutional investors. Institutional investors should be able to judge the appropriateness of the products being offered to them based on their investing needs and knowledge of the market. This proposal is more applicable to the retail market where products are more likely to be recommended based on monetary and non-monetary benefits such as commissions. (Paragraphs 47 to 74 in Part III of the Consultation Paper and Appendix C 8.3 Code of Conduct for Professional Investor Rules refers.)
9. *Sales Disclosure Document* – We would like to see a clear exemption from this requirement for institutional investors for the reasons set out in (8) above. We agree that this requirement should not be applied to listed investment products such as ETFs. (Paragraphs 81 to 89 in Part III of the Consultation Paper and Appendix C 8.3A Code of Conduct for Professional Investor Rules refers.)
10. *Audio Recording* – We would like to see a clear exemption from this requirement for institutional investors. Sophisticated investors like institutional investors do not need this to be part of the sales and relationship management process, and at times, for privacy reasons, might prefer not to have their calls recorded. The existing requirement is adequate. (Paragraphs 90 to 97 in Part III of the Consultation Paper refers.)

PART IV – POST-SALE ARRANGEMENTS – COOLING OFF PERIOD

11. *Cooling-off Period* – A cooling off period should not apply to ETFs and should not apply to institutional investors regardless of the product type. In the primary market (i.e. subscriptions and redemptions) ETFs are generally available only to institutional investors and participating dealers so the risk of an uninformed purchase is extremely low. ETFs are also designed with daily openings which means investors can redeem/exit on any day without any lock-up period. Investors may also sell/exit ETFs via trading on the secondary market (i.e. the stock exchange). As for institutional investors, it should be assumed that they have the requisite knowledge and skills to decide upon an investment in an investment product and so do not require a cooling off period. (Paragraphs 2 to 14 in Part IV of the Consultation Paper refers.)

We appreciate the opportunity to share our comments with you and welcome further dialog should you have any questions or wish to discuss the points we have raised. Please feel free to call me directly or contact us at your convenience.

Yours sincerely,



Kelly Driscoll
Senior Managing Director
Asia ex-Japan